

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 644 of 1996

WITH

F.A. NOS. 646/96 TO 653/96

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT THROUGH LAND ACQU. & REHABI. OFFICER

Versus

NATHA JIVA

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Appearance:

MR PG. DESAI, GP for Appellants in FA Nos. 644/96, 646/96 to 649/96.

MS HARSHA DEVANI, AGP for Appellants in FA Nos.650/96 to 653/96.

MR YS LAKHANI, for Respondent No.1 in F.A.No.653/96  
RESPONDENTS served in rest of the First Appeals.

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CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 10/03/98

ORAL COMMON JUDGEMENT ( PER ; Y.B.BHATT, J )

1. This group of appeals arises under Sec. 54 of

the Land Acq. Act read with Sec. 96 of the C.P.Code and are filed by the State of Gujarat, challenging the common judgment and awards passed in a group of Land Ref. Cases decided by the Reference Court under Sec. 18 of the said Act.

2. The lands in question were notified for acquisition by the relevant notification under Sec.4 of the said Act, published on 26th May 1983. The said lands are situated in village Mota Dadava, Ta; Gondal, Dist.: Rajkot, for the implementation of the Ishwariya Irrigation Scheme.

2.1 After following the necessary procedure, the Land Acq. Officer pronounced his award on 7.1.1984 whereby he determined the market value of the land at Rs. 110/ per Are.

3. The respondents- original land holders not having accepted the award, preferred their respective references under Sec. 18 of the said Act. The same came to be decided by the common judgment and awards which are now impugned in the present appeals.

3.1 The Reference Court in the aforesaid judgment and awards, determined the market value at Rs. 140/ per Are. The lands were irrigated lands and were, therefore, valued as Bagayat land. The Reference Court has also granted incidentally some amounts by way of compensation for certain superstructure existing on the different survey numbers such as house, kundi ( small water tank at ground level ), machine room etc.

3.2 It is also pertinent to note, and this forms the main contention raised by the appellant in the present group of appeals, that since the lands have been valued as agricultural lands and also as irrigated land on account of availability of a source of water through

wells existing on the lands, separate compensation could not be awarded for the wells in question.

4. This contention raised by the ld. counsel for the appellant State is required to be upheld. There is no controversy that there were wells on each of the land under acquisition, that the same were being used for the purpose of irrigation, that crops were obtained by utilising this facility of irrigation and that lands in question have been valued as irrigated land (Bagayat land).

4.1 It is by now a settled law laid down by the Supreme Court , reiterated in the case of State of Bihar v/s Ratanlal Shahu, reported at 1996(10) SCC P.635, following the earlier decision of the Supreme Court in the case of O.Janardana Reddy & Others, reported at 1994(6) SCC P.456 that where the lands have been valued as irrigated lands, since irrigation facility was available and was in fact utilised, the wells which provided the water for irrigation cannot be separately valued, and separate or independent compensation for the wells could not be awarded. In the instant appeals, in each of the Land Ref. Cases involved, the Reference Court has awarded a uniform rate of Rs. 5000/ per well. This particular compensation awarded, that is to say, Rs. 5000/ per well in each of the Land Ref. Cases, is clearly not justified, and to that extent, the impugned judgment and awards require to be modified. Consequently, the amount of compensation awarded to each of the claimants in each of the Land Ref. Cases in respect of land value shall stand reduced by a sum of Rs. 5000/, and there shall be a consequential reduction in the amount of solatium, interest and cost to the aforesaid extent.

5. We may also mention in passing that the ld. counsel for the appellant has also sought to justify his submission that the determination of the market value of the acquired land by the Reference Court at the rate of Rs. 140/ per Are is excessive and is also required to be reduced. In this context, we are satisfied that the Reference Court has, considering the totality of the evidence on record and the evidentiary value of each piece of evidence, correctly determined the market value at the said rate. In this context, we are of the opinion that the Reference Court has correctly appreciated the evidence and has drawn proper and justifiable conclusions therefrom. We are, therefore, not inclined to interfere with the determination of the market value of the acquired land.

6. Thus, the present appeals partly succeed as indicated herein above, and awards in appeals shall stand modified accordingly. There shall be no orders as to cost in the present appeals. Decree accordingly.

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